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DEC 3 - 1992

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

You were created by act of the [REDACTED] legislature to oversee a new consolidated school district for the towns of [REDACTED] and [REDACTED]. The date of the creating legislation was [REDACTED]. You will be funded in approximately equal amounts by state funds and by funds derived from locally assessed real estate taxes. You will operate only the middle and high schools for the two towns. The elementary schools will continue to be operated separately by each town.

Your creating legislation makes no mention of section 501(c)(3) purposes nor does it contain a section 501(c)(3) dissolution provision. You are governed by a School Committee, whose powers and duties are outlined in a governance and operations manual that you have furnished to us. This manual provides that all policies and other actions adopted by the Committee must be within the limits imposed or in the powers statutorily granted school committees, and that the Committee has final legal authority on all matters within the framework of the statute. The referenced statute is [REDACTED]. [REDACTED] covers compulsory attendance, and outlines school committee powers for enforcement of compulsory attendance laws, including actions which may be taken against parents of students not in compliance with state attendance laws.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from taxation for organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). As organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Revenue Ruling 60-384, 1960-2 C.B., 172, states that a wholly-owned state or municipal instrumentality which is a separate entity and which is organized and operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code may qualify for exemption under section 501(a) as an organization described in section 501(c)(3) of the Code. That revenue ruling goes on to state that, on the other hand, if the organization conducting the activity, although a separate entity, is clothed with powers other than those described in section 501(c)(3), it would not be a clear counterpart of a section 501(c)(3) organization, and would not qualify for recognition of exemption under section 501(c)(3). The revenue ruling gives as an example a situation where an instrumentality exercises enforcement or regulatory powers in the public interest such as health, welfare, or safety, and concludes that those powers are beyond those described in section 501(c)(3).

Revenue Ruling 74-14, 1974-1, C.B., 125, describes a public housing authority incorporated under a state statute conferring upon it the power to conduct examinations and investigations, to administer oaths, issue subpoenas, and make its findings and recommendations available to appropriate agencies. The revenue

[REDACTED]

ruling concludes that the powers described are regulatory and enforcement powers of the kind referred to in Rev. Rul. 60-384, supra, and that the organization was therefore not a clear counterpart of an organization described in section 501(c)(3) of the Code, and did not qualify for exemption under section 501(c)(3).

The powers granted to you under [REDACTED] with regard to compulsory education indicate that you have a substantial governmental purpose which is to implement and enforce the state's system of compulsory education, which constitute regulatory and enforcement powers as discussed in Rev. Rul. 60-384 and Rev. Rul. 74-14, supra. The powers granted to you under Title [REDACTED] are outside of the scope of section 501(c)(3) because they empower you to promulgate and enforce standards and modes of conduct. Thus, you are not organized and operated exclusively for the purposes described in section 501(c)(3), which is required by section 501(c)(3) and the regulations thereunder. Accordingly, you are not exempt under section 501(c)(3).

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Internal Revenue Code, provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District

[REDACTED]

Director in Brooklyn, New York. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

Sincerely yours,

[REDACTED]

[REDACTED]
Chief, Exempt
Organizations Rulings
Branch 2

cc: DD, Brooklyn
Attn: ED Group

cc: [REDACTED]

[REDACTED]

[REDACTED]

12/1/00